



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

CASE OF JAWORSKI v. POLAND

(Application no. 25715/02)

JUDGMENT

STRASBOURG

28 March 2006

FINAL

28/06/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Jaworski v. Poland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Mr J. BORRERO BORRERO, *judges*,

and Ms F. ELEN-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 7 March 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 25715/02) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mr Piotr Jaworski (“the applicant”), on 26 June 2002.

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz, of the Ministry of Foreign Affairs.

3. On 4 May 2004 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1977 and lives in Zielona Góra, Poland.

5. On 19 December 1999 the applicant was arrested by the police on suspicion of kidnapping a certain J.M. On 21 December 1999 the Zielona Góra District Court (*Sąd Rejonowy*) ordered that the applicant be remanded in custody until 19 March 2000 in view of the reasonable suspicion that he had committed the offence in question and the fear that, given the severity of the anticipated penalty, he might go into hiding or otherwise obstruct the proceedings against him.

6. On 1 February 2000 the Zielona Góra Regional Prosecutor (*Prokurator Okręgowy*) refused the applicant's counsel's request to release him under police supervision. The Prosecutor reasoned that there was the risk that the applicant would induce other suspects to give false testimony or attempt to disclose the anonymous witnesses. The Poznań Appellate Prosecutor (*Prokurator Apelacyjny*) upheld that decision on 16 February 2000.

7. On 9 March 2000 the Krosno Odrzańskie District Court prolonged the applicant's detention until 19 June 2000. The court repeated the reasons previously given for the applicant's detention.

8. Later, the applicant was charged relating to the homicide of J.M.

9. On 13 June 2000 the Poznań Court of Appeal (*Sąd Apelacyjny*), on an application from the Zielona Góra Regional Prosecutor (*Prokurator Okręgowy*) prolonged the applicant's detention pending the investigation until 19 September 2000. It fully upheld the reasons originally given for his detention.

10. The applicant repeatedly – but unsuccessfully – asked for release, arguing that the charges against him had no factual basis.

11. On 6 September 2000 the Zielona Góra Regional Court (*Sąd Okręgowy*) prolonged the applicant's detention until 19 December 2000, finding that the grounds originally given for keeping him in custody were still valid.

12. On 23 February 2001 the Prosecutor filed the bill of indictment with the homicide of J.M.

13. The Regional Court subsequently extended the applicant's detention until 8 June 2001. The relevant decisions were given on 12 December 2000 and 12 March 2001 respectively. The court reiterated the original grounds for his detention and added that the suspicion against the applicant was confirmed by evidence given by 2 anonymous witnesses and that, given that 2 of his 3 accomplices were still being searched for by an international "wanted" notice, the risk that he might obstruct justice was considerable.

14. Between March 2002 and the end of December 2003 the Poznań Court of Appeal prolonged the applicant's detention on 6 occasions. Those decisions were given on the following dates: 12 March, 6 June and 14 November 2002 and 26 March, 27 June and 29 December 2003. On the last of those dates, his detention was extended until 30 June 2004.

15. In all those decisions, the Court of Appeal reiterated that there was a reasonable suspicion that the applicant had committed the serious offences with which he had been charged. It considered that, given the severity of the anticipated sentence and the risk that the applicant might tamper with evidence, keeping him in detention was necessary to secure the proper conduct of the proceedings. It also found that there were no special grounds, as specified in Article 259 of the Code of Criminal Procedure, that would justify lifting the detention and imposing less severe measures.

16. Throughout the trial the applicant made several unsuccessful applications for release and appealed, likewise unsuccessfully, against the decisions extending his detention.

17. In the decision given on 29 December 2003, the Court of Appeal also stressed that keeping the applicant in custody was necessary in view of the fact that the Regional Court had – due to certain procedural flaws – to restart the trial and to rehear all evidence that had so far been taken. It further considered that his detention had to be prolonged because the Regional Court needed more time to hear fresh evidence suggested by the accused. The date for the restart of the trial was set for 26 January 2004.

18. The applicant's detention was further extended by the Poznań Court of Appeal on 29 June and 28 September 2004, 23 March, 23 August and 23 November 2005.

19. The applicant is still in detention pending trial.

II. RELEVANT DOMESTIC LAW

20. The Code of Criminal Procedure of 1997, which entered into force on 1 September 1998, defines detention on remand as one of the so-called “preventive measures” (*środki zapobiegawcze*). The other measures are bail (*poręczenie majątkowe*), police supervision (*dozór policji*), guarantee by a responsible person (*poręczenie osoby godnej zaufania*), guarantee by a social entity (*poręczenie społeczne*), temporary ban on engaging in a given activity (*zawieszenie oskarżonego w określonej działalności*) and prohibition to leave the country (*zakaz opuszczania kraju*).

21. Article 249 § 1 sets out the general grounds for imposition of the preventive measures. That provision reads:

“Preventive measures may be imposed in order to ensure the proper conduct of proceedings and, exceptionally, also in order to prevent an accused's committing another, serious offence; they may be imposed only if evidence gathered shows a significant probability that an accused has committed an offence.”

22. Article 258 lists grounds for detention on remand. It provides, in so far as relevant:

“1. Detention on remand may be imposed if:

(1) there is a reasonable risk that an accused will abscond or go into hiding, in particular when his identity cannot be established or when he has no permanent abode [in Poland];

(2) there is a justified fear that an accused will attempt to induce [witnesses or co-defendants] to give false testimony or to obstruct the proper course of proceedings by any other unlawful means;

2. If an accused has been charged with a serious offence or an offence for the commission of which he may be liable to a statutory maximum sentence of at least 8 years' imprisonment, or if a court of first instance has sentenced him to at least

3 years' imprisonment, the need to continue detention to ensure the proper conduct of proceedings may be based on the likelihood that a severe penalty will be imposed."

23. The Code sets out the margin of discretion as to the continuation of a specific preventive measure. Article 257 reads, in so far as relevant:

"1. Detention on remand shall not be imposed if another preventive measure is sufficient."

24. Article 259, in its relevant part, reads:

"1. If there are no special reasons to the contrary, detention on remand shall be lifted, in particular if depriving an accused of his liberty would:

- (1) seriously jeopardise his life or health; or
- (2) entail excessively harsh consequences for the accused or his family."

25. The 1997 Code not only sets out maximum statutory time-limits for detention on remand but also, in Article 252 § 2, lays down that the relevant court – within those time-limits – must in each detention decision determine the exact time for which detention shall continue.

26. Article 263 sets out time-limits for detention. In the version applicable up to 20 July 2000 it provided:

"1. Imposing detention in the course of an investigation, the court shall determine its term for a period not exceeding 3 months.

2. If, due to the particular circumstances of the case, an investigation cannot be terminated within the term referred to in paragraph 1, the court of first instance competent to deal with the case may – if need be and on the application made by the [relevant] prosecutor – prolong detention for a period [or periods] which as a whole may not exceed 12 months.

3. The whole period of detention on remand until the date on which the first conviction at first instance is imposed may not exceed 2 years.

4. Only the Supreme Court may, on application made by the court before which the case is pending or, at the investigation stage, on application made by the Prosecutor General, prolong detention on remand for a further fixed period exceeding the periods referred to in paragraphs 2 and 3, when it is necessary in connection with a stay of the proceedings, a prolonged psychiatric observation of the accused, a prolonged preparation of an expert report, when evidence needs to be obtained in a particularly complex case or from abroad, when the accused has deliberately prolonged the proceedings, as well as on account of other significant obstacles that could not be overcome."

27. On 20 July 2000 paragraph 4 was amended and since then the competence to prolong detention beyond the time-limits set out in paragraphs 2 and 3 has been vested in the court of appeal within whose jurisdiction the offence in question has been committed.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

28. The applicant complained under Articles 5 §§ 3 and 5 and under Article 3 of the Convention that the length of his pre-trial detention was excessive. The Court considers that this complaint falls to be examined under Article 5 § 3 of the Convention, which reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

A. Admissibility

29. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Period to be taken into consideration

30. The Court observes that the applicant was arrested on and remanded in custody on 19 December 1999. He is still in custody. Accordingly, the total period of his detention amounts to over 6 years and 2 months to date.

2. The reasonableness of the length of detention

(a) The parties' arguments

31. The Government maintained that the length of the applicant's detention was not excessive and that it was duly justified during the entire period he spent in custody. They stated that there were relevant and sufficient grounds for justifying his detention. It was necessary to ensure the proper course of the proceedings, especially in view of the gravity of the charges and severe penalty. There was also a serious risk of the applicant's absconding or tampering with the evidence.

32. The Government underlined that the domestic authorities showed due diligence when dealing with the case, both during the investigation and the trial. They stressed that all the applicant's requests for release and appeals against decisions prolonging his detention were examined by the competent courts thoroughly and with respect for the applicant's rights guaranteed under Article 5 § 3.

33. The applicant contested these arguments. He submitted that his detention had been inordinately lengthy.

34. In the applicant's opinion, his appeals against prolongation of his detention and applications for release had never been duly examined by the courts. Their decisions concerning his custody referred mainly to the reasonable suspicion that he had committed the impugned offence, which had not been based on any concrete, true circumstance.

35. The applicant stressed that his case was not very complex and that he had never attempted to obstruct the proceedings. He argued that, contrary to the Government's submissions, his case was not treated with due diligence by the trial court.

(b) The Court's assessment

(i) Principles established under the Court's case-law

36. The Court reiterates that the question whether a period of detention is reasonable cannot be assessed in the abstract but must be considered in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, §§ 110-111, ECHR 2000-X).

37. Under Article 5 § 3 the national judicial authorities must ensure that the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for a departure from the rule in Article 5 and must set them out in their decisions on the applications for release.

38. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. The Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also be satisfied that the national authorities displayed "special diligence" in the conduct of the proceedings (see, for instance, *Jabłoński v. Poland*, no. 33492/96, § 80, 21 December 2000).

(ii) Application of the principles to the circumstances of the present case

39. The Court observes that in their decisions concerning the judicial authorities relied on three principal grounds, namely the reasonable suspicion that the applicant had committed the offence with which he had been charged, the serious nature of that offence and the need to ensure the

proper conduct of the proceedings. They repeated those grounds in nearly all the decisions concerning the applicant's detention (see paragraphs 9-15 above). Later, as the trial proceeded, the courts based their decisions on the risk that the applicant, if released, might obstruct the proper conduct of the trial, especially as some of his accomplices were being searched for by an international "wanted" notice (see paragraph 13 above) .

40. The Court agrees that the strong suspicion against the applicant of having committed the serious offence could have initially warranted his detention. However, it does not consider that those grounds can suffice to justify the applicant's being kept in custody for the entire period in question, as, with the passage of time, they inevitably became less relevant.

41. It should be noted that during the entire period of the applicant's detention, the authorities did not envisage the possibility of imposing on the applicant other measures – such as bail or police supervision – expressly foreseen by Polish law to secure the proper conduct of criminal proceedings.

42. The Court would emphasise that under Article 5 § 3 the authorities, when deciding whether a person should be released or detained, are obliged to consider alternative measures of ensuring his appearance at trial. Indeed, that provision proclaims not only the right to "trial within a reasonable time or to release pending trial" but also lays down that "release may be conditioned by guarantees to appear for trial" (see the *Jabłoński* judgment cited above, § 83).

43. Moreover, it does not emerge from the relevant decisions why the authorities considered that those other measures would not have warranted the applicant's appearance before the court. The Court is not persuaded by the argument that the applicant might attempt to obstruct justice, as his accomplices were being still searched for, since the courts did not indicate any concrete circumstance showing that the anticipated risk went beyond a merely theoretical possibility.

44. Lastly, the Court cannot but note that the proceedings against the applicant are still pending before the first-instance court and that he still remains in custody.

45. In the circumstances, the Court finds that the grounds given for the applicant's pre-trial detention were not "relevant" and "sufficient" to justify holding him in custody for the whole of an extremely long period of over 6 years.

46. There has accordingly been a violation of Article 5 § 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

48. The applicant claimed 42,034 Polish zlotys (PLN) in respect of pecuniary and PLN 200,000 in respect of non-pecuniary damage.

49. The Government contended that the sum claimed was excessive. They requested the Court to rule that the finding of a violation would constitute in itself sufficient just satisfaction. In the alternative, they invited the Court to make an award of just satisfaction on the basis of its case-law in similar cases and national economic circumstances.

50. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicant has suffered non-pecuniary damage – such as distress resulting from the excessive length of his detention – which is not sufficiently compensated by the finding of a violation of the Convention and awards the applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

51. The applicant also claimed PLN 12,000 for the costs and expenses incurred before the domestic courts and in the Court.

52. The Government asked the Court to make an award only in so far as the costs and expenses claimed were actually and necessarily incurred and were reasonable as to quantum.

53. The Court reiterates that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). In the present case, the Court finds that the applicant has not produced any evidence supporting his claim as required by Rule 60 § 2 of the Rules of Court. Accordingly, it makes no award under this head.

C. Default interest

54. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 March 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President